

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DIANE MARIE WASHINGTON
a.k.a. DIANE MARIE LEWIS
a.k.a. DIANE MARIE BROTTERTSON
2820 Broken Oak Court
San Jose, CA 95148

Registered Nurse License No. 486290
Certified Registered Nurse Anesthetist Certificate
No. 1948

Respondent

Case No. 2012-529

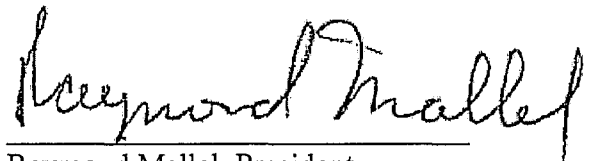
OAH No. 2012030877

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **March 8, 2013.**

IT IS SO ORDERED **February 7, 2013.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2012-529

12 **DIANE MARIE WASHINGTON**
13 **AKA DIANE MARIE LEWIS**
14 **AKA DIANE MARIE BROTTERTSON**
2820 Broken Oak Court
15 San Jose, CA 95148
Registered Nurse License No. 486290
16 Certified Registered Nurse Anesthetist
Certificate No. 1948

OAH No. 2012030877

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

Respondent.

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 PARTIES

22 1. Louise R. Bailey, M.Ed., RN ("Complainant") is the Executive Officer of the Board
23 of Registered Nursing. She brought this action solely in her official capacity and is represented in
24 this matter by Kamala D. Harris, Attorney General of the State of California, by Judith J. Loach,
25 Deputy Attorney General.

26 2. Respondent Diane Marie Washington, aka Diane Marie Lewis, aka Diane Marie
27 Brotterson ("Respondent") is represented in this proceeding by attorney John L. Fleeer, Esq.,
28 whose address is: 1850 Mt. Diablo Boulevard, Suite 120, Walnut Creek, CA 94596.

3. On or about February 28, 1993, the Board of Registered Nursing issued Registered Nurse License No. 486290 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2012-529 and will expire on November 30, 2012, unless renewed.

4. On or about February 2, 1993, the Board of Registered Nursing issued Certified Registered Nurse Anesthetist Certificate No. 1948 to Respondent. The Certified Registered Nurse Anesthetist Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 2012-529 and will expire on November 30, 2012, unless renewed.

JURISDICTION

5. Accusation No. 2012-529 was filed before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 6, 2012. Respondent timely filed her Notice of Defense contesting the Accusation.

6. A copy of Accusation No. 2012-529 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2012-529. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

///

9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

10. Respondent admits the truth of each and every charge and allegation in Accusation No. 2012-529.

11. Respondent agrees that her Registered Nurse License and Registered Nurse Anesthetist Certificate are subject to discipline and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 486290 and Registered Nurse Anesthetist Certificate No. 1948 issued to Respondent Diane Marie Washington, aka Diane Marie Lewis, aka Diane Marie Brottersson are revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

1 Upon successful completion of probation, Respondent's registered nurse license and
2 registered nurse anesthetist certificate shall be fully restored.

3 **3. Report in Person.** Respondent, during the period of probation, shall appear in
4 person at interviews/meetings as directed by the Board or its designated representatives.

5 **4. Residency, Practice, or Licensure Outside of State.** Periods of residency or
6 practice as a registered nurse and/or as a registered nurse anesthetist outside of California shall
7 not apply toward a reduction of this probation time period. Respondent's probation is tolled, if
8 and when she resides outside of California. Respondent must provide written notice to the Board
9 within 15 days of any change of residency or practice outside the state, and within 30 days prior
10 to re-establishing residency or returning to practice in this state.

11 Respondent shall provide a list of all states and territories where she has ever been licensed
12 as a registered nurse, registered nurse anesthetist, vocational nurse, or practical nurse.
13 Respondent shall further provide information regarding the status of each license and any changes
14 in such license status during the term of probation. Respondent shall inform the Board if she
15 applies for or obtains a new nursing license and/or new nurse anesthetist certificate during the
16 term of probation.

17 **5. Submit Written Reports.** Respondent, during the period of probation, shall submit
18 or cause to be submitted such written reports/declarations and verification of actions under
19 penalty of perjury, as required by the Board. These reports/declarations shall contain statements
20 relative to Respondent's compliance with all the conditions of the Board's Probation Program.
21 Respondent shall immediately execute all release of information forms as may be required by the
22 Board or its representatives.

23 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
24 state and territory in which she has a registered nurse license and/or registered nurse anesthetist
25 certificate.

26 **6. Function as a Registered Nurse.** Respondent, during the period of probation, shall
27 engage in the practice of registered nursing in California for a minimum of 24 hours per week for
28 6 consecutive months or as determined by the Board.

1 For purposes of compliance with the section, "engage in the practice of registered nursing"
2 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
3 non-direct patient care position that requires licensure as a registered nurse.

4 The Board may require that advanced practice nurses engage in advanced practice nursing
5 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

6 If Respondent has not complied with this condition during the probationary term, and
7 Respondent has presented sufficient documentation of her good faith efforts to comply with this
8 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
9 extension of Respondent's probation period up to one year without further hearing in order to
10 comply with this condition. During the one year extension, all original conditions of probation
11 shall apply.

12 **7. Employment Approval and Reporting Requirements.** Respondent shall obtain
13 prior approval from the Board before commencing or continuing any employment, paid or
14 voluntary, as a registered nurse and/or registered nurse anesthetist. Respondent shall cause to be
15 submitted to the Board all performance evaluations and other employment related reports as a
16 registered nurse and/or as a registered nurse anesthetist upon request of the Board.

17 Respondent shall provide a copy of this Decision to her employer and immediate
18 supervisors prior to commencement of any nursing or other health care related employment.

19 In addition to the above, Respondent shall notify the Board in writing within seventy-two
20 (72) hours after she obtains any nursing or other health care related employment. Respondent
21 shall notify the Board in writing within seventy-two (72) hours after she is terminated or
22 separated, regardless of cause, from any nursing, or other health care related employment with a
23 full explanation of the circumstances surrounding the termination or separation.

24 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding
25 Respondent's level of supervision and/or collaboration before commencing or continuing any
26 employment as a registered nurse, registered nurse anesthetist or education and training that
27 includes patient care.

28 Respondent shall practice only under the direct supervision of a registered nurse in good

1 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
2 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
3 approved.

4 Respondent's level of supervision and/or collaboration may include, but is not limited to the
5 following:

6 (a) Maximum - The individual providing supervision and/or collaboration is present in
7 the patient care area or in any other work setting at all times.

8 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
9 care unit or in any other work setting at least half the hours Respondent works.

10 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
11 person communication with Respondent at least twice during each shift worked.

12 (d) Home Health Care - If Respondent is approved to work in the home health care
13 setting, the individual providing supervision and/or collaboration shall have person-to-person
14 communication with Respondent as required by the Board each work day. Respondent shall
15 maintain telephone or other telecommunication contact with the individual providing supervision
16 and/or collaboration as required by the Board during each work day. The individual providing
17 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
18 patients' homes visited by Respondent with or without Respondent present.

19 **9. Employment Limitations.** Respondent shall not work for a nurse's registry, in any
20 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,
21 or for an in-house nursing pool.

22 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
23 registered nursing supervision and other protections for home visits have been approved by the
24 Board. Respondent shall not work in any other registered nursing occupation where home visits
25 are required.

26 Respondent shall not work in any health care setting as a supervisor of registered nurses.
27 The Board may additionally restrict Respondent from supervising licensed vocational nurses
28 and/or unlicensed assistive personnel on a case-by-case basis.

1 Respondent shall not work as a faculty member in an approved school of nursing or as an
2 instructor in a Board approved continuing education program.

3 Respondent shall work only on a regularly assigned, identified and predetermined
4 worksite(s) and shall not work in a float capacity.

5 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
6 request documentation to determine whether there should be restrictions on the hours of work.

7 **10. Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and
8 successfully complete a course(s) relevant to the practice of registered nursing no later than six
9 months prior to the end of her probationary term.

10 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
11 Respondent shall submit to the Board the original transcripts or certificates of completion for the
12 above required course(s). The Board shall return the original documents to Respondent after
13 photocopying them for its records.

14 **11. Cost Recovery.** Respondent shall pay to the Board costs associated with its
15 investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
16 amount of \$4,185.00. Respondent shall be permitted to pay these costs in a payment plan
17 approved by the Board, with payments to be completed no later than three months prior to the end
18 of the probation term.

19 If Respondent has not complied with this condition during the probationary term, and
20 Respondent has presented sufficient documentation of her good faith efforts to comply with this
21 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
22 extension of Respondent's probation period up to one year without further hearing in order to
23 comply with this condition. During the one year extension, all original conditions of probation
24 will apply.

25 **12. Violation of Probation.** If Respondent violates the conditions of her probation, the
26 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order
27 and impose the stayed discipline (revocation/suspension) of Respondent's license and/or
28 registered nurse anesthetist certificate.

1 If during the period of probation, an accusation or petition to revoke probation has been
2 filed against Respondent's license and/or certificate or the Attorney General's Office has been
3 requested to prepare an accusation or petition to revoke probation against Respondent's license
4 and/or certificate, the probationary period shall automatically be extended and shall not expire
5 until the accusation or petition has been acted upon by the Board.

6 13. **License Surrender.** During Respondent's term of probation, if she ceases practicing
7 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,
8 Respondent may surrender her registered nursing license and/or registered nurse anesthetist
9 certificate to the Board. The Board reserves the right to evaluate Respondent's request and to
10 exercise its discretion whether to grant the request, or to take any other action deemed appropriate
11 and reasonable under the circumstances, without further hearing. Upon formal acceptance of the
12 tendered license and/or certificate and wall certificates, Respondent will no longer be subject to
13 the conditions of probation.

14 Surrender of Respondent's license and/or certificate shall be considered a disciplinary
15 action and shall become a part of Respondent's license history with the Board. A registered nurse
16 whose license and/or certificate has been surrendered may petition the Board for reinstatement no
17 sooner than the following minimum periods from the effective date of the disciplinary decision:

18 (1) Two years for reinstatement of a license and/or certificate that was surrendered for
19 any reason other than a mental or physical illness; or

20 (2) One year for a license and/or certificate surrendered for a mental or physical
21 illness.

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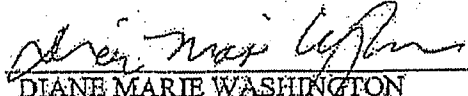
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1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, John L. Fleer, Esq. I understand the stipulation and the effect it will
4 have on my Registered Nurse License, and Registered Nurse Anesthetist Certificate. I enter into
5 this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and
6 agree to be bound by the Decision and Order of the Board of Registered Nursing.

7
8 DATED: 10/30/2012


DIANE MARIE WASHINGTON
Respondent

10 I have read and fully discussed with Respondent Diane Marie Washington the terms and
11 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
12 I approve its form and content.

13
14 DATED: 11/4/12


JOHN L. FLEER, ESQ.
Attorney for Respondent

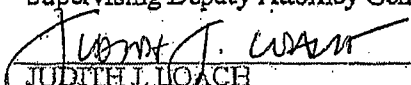
17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
20 Affairs.

21
22 DATED: 11/5/2012

Respectfully submitted,

23 KAMALA D. HARRIS
Attorney General of California
24 FRANK H. PACOE
Supervising Deputy Attorney General

25 
26 JUDITH J. LOACH
Deputy Attorney General
27 Attorneys for Complainant

28 SF2011203099

Exhibit A

Accusation No. 2012-529

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUDITH J. LOACH
Deputy Attorney General
4 State Bar No. 162030
455 Golden Gate Avenue, Suite 11000
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E-mail: Judith.Loach@doj.ca.gov
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2012-529**

13 **DIANE MARIE WASHINGTON**
14 **Aka Diane Marie Lewis**
15 **Aka Diane Marie Brottersen**
16 **2820 Broken Oak Court**
17 **San Jose, CA 95148**
18 **Registered Nurse License No. 486290**
19 **Certified Registered Nurse Anesthetist**
20 **Certificate No. 1948**

ACCUSATION

Respondent.

21 Complainant alleges:

22 **PARTIES**

23 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
24 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
25 of Consumer Affairs.

26 2. On or about February 28, 1993, the Board of Registered Nursing issued Registered
27 Nurse License Number 486290 to Diane Marie Washington, aka Diane Marie Lewis, aka Diane
28 Marie Brottersen ("Respondent"). The Registered Nurse License was in full force and effect at
all times relevant to the charges brought herein and will expire on November 30, 2012, unless
renewed.

3. On or about February 8, 1993, the Board of Registered Nursing issued Certified Registered Nurse Anesthetist Certificate Number 1948 to Respondent. The Certified Registered Nurse Anesthetist Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2012, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board of Registered Nursing (“Board”), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part that “[t]he lapsing or suspension of a license by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such license, or to render a decision suspending or revoking such license.”

RELEVANT STATUTES AND REGULATIONS

7. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions."

• • •

8. California Code of Regulations, title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the

1 failure to exercise that degree of learning, skill, care and experience ordinarily possessed and
2 exercised by a competent registered nurse as described in Section 1443.5."

3 9. California Code of Regulations, title 16, section 1443.5 states:

4 "A registered nurse shall be considered to be competent when he/she consistently
5 demonstrates the ability to transfer scientific knowledge from social, biological and physical
6 sciences in applying the nursing process, as follows:

7 "(1) Formulates a nursing diagnosis through observation of the client's physical condition
8 and behavior, and through interpretation of information obtained from the client and others,
9 including the health team.

10 "(2) Formulates a care plan, in collaboration with the client, which ensures that direct and
11 indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and
12 for disease prevention and restorative measures.

13 "(3) Performs skills essential to the kind of nursing action to be taken, explains the health
14 treatment to the client and family and teaches the client and family how to care for the client's
15 health needs.

16 ...

17 "(5) Evaluates the effectiveness of the care plan through observation of the client's physical
18 condition and behavior, signs and symptoms of illness, and reactions to treatment and through
19 communication with the client and health team members, and modifies the plan as needed.

20 "(6) Acts as the client's advocate, as circumstances require, by initiating action to improve
21 health care or to change decisions or activities which are against the interests or wishes of the
22 client, and by giving the client the opportunity to make informed decisions about health care
23 before it is provided."

24 COST RECOVERY

25 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
26 administrative law judge to direct a licentiate found to have committed a violation or violations of
27 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
28 enforcement of the case.

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12. On July 29, 2009, patient A.B. was admitted to labor and delivery at Kaiser with a term pregnancy. The fetal heart rate tracing was non-reassuring, resulting in A.B.'s obstetrician calling for a cesarean section delivery.

14. Anesthesiologist Dr. Rosoff was called to the operating room. Based on A.B.'s symptoms and presentation he determined that she had been given a paralytic agent. He administered medications to reverse the effects of the paralytic agent. Dr. Rosoff also observed that there were two unlabeled syringes of medication attached to the intravenous solution being administered to A.B.

FIRST CAUSE FOR DISCIPLINE

16. Respondent is subject to disciplinary action for incompetence pursuant to Business and Professions Code section 2761(a)(1), in that she administered a paralytic agent to A.B., with said medication not being indicated and resulting in adverse consequences for A.B. The facts in support of this cause for discipline are set forth above in paragraphs 11 through 14.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

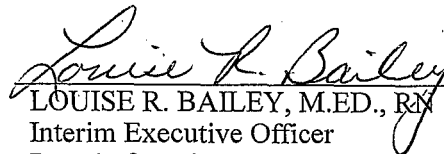
1. Revoking or suspending Registered Nurse License Number 486290, issued to Diane Marie Washington, aka Diane Marie Lewis, and aka Diane Marie Brottersen;

2. Revoking or suspending Certified Registered Nurse Anesthetist Certificate Number 1948, issued to Diane Marie Washington, aka Diane Marie Lewis, and aka Diane Marie Brottersen;

3. Ordering Respondent to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

4. Taking such other and further action as deemed necessary and proper.

DATED: March 6, 2012


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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